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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,660	01/15/2004	John G. Fischer	JGF 02775 PTUS	5884
32233	7590	03/17/2008		
STORM LLP				
BANK OF AMERICA PLAZA				
901 MAIN STREET, SUITE 7100				
DALLAS, TX 75202				
EXAMINER				
AMINI, JAVID A				
ART UNIT		PAPER NUMBER		
2628				
MAIL DATE		DELIVERY MODE		
03/17/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/758,660

## Applicant(s)

FISCHER, JOHN G.

## Examiner

JAVID A. AMINI

## Art Unit

2628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE-US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/3/2008 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tiongson et al. US 2003/0103070 A1, and in view of Juha Savolainen, Juha Kuusela; Violatility analysis framework for product lines; **ACM SIGSOFT Software Engineering Notes**, Volume 26 Issue 3, hereinafter Savolainen.

Claim 1.

Tiongson teaches a method of displaying competitive product performance data (see abstract), comprising: Tiongson teaches providing a plurality of animated graphic files, each animated graphic file depicting a unique contest between at least a first entity representing a first product and a second entity representing a second product (see paragraph 0013);

Tiongson does not explicitly specify associating each animated graphic file with at least one unique numeric range that collectively comprise a substantially continuous numeric scale;

However, Savolainen teaches associating each animated graphic file (see page 2 [0019]) with at least one unique numeric range that collectively comprise a substantially continuous numeric scale (page 135 section 4);

Tiongson teaches in fig. 4 determining a first product (e.g. in 406 the ThinkPad 770 81u can be considered as the first product) value representing the first product's performance on a test;

Tiongson teaches in fig. 4 determining a second product (e.g. in 406 the ThinkPad 770 82u can be considered as the second product) value representing the second product's performance on the test; Tiongson teaches solving for a numeric contest value by mathematical relationship (page 1, [0012]) between the first product value and the second product value; Savolainen teaches determining which numeric range includes the contest value (p. 135 section 3.5); Tiongson teaches selecting the animated graphic file associated with the numeric range which includes the contest value; and, displaying the selected animated graphic file (page 1, [0019]).

Thus, it would have been obvious to an ordinary person in the art to combine Savolainen into Tiongson because during the instantiation of a product from the system family, tools (p. 139 section 7) are needed to define what kind of properties this particular family member should possess. This automation of volatility analysis would be beneficial to a user.

### Claim 3.

Tiongson teaches the method of displaying competitive product performance data in accordance with claim 1, wherein displaying the selected animated contest further comprises: providing

access to the selected animated contest file on a web page for viewing by Internet users (in fig. 1 #34 and 36 are considered as a web page access for browsing the internet).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAVID A. AMINI whose telephone number is (571)272-7654. The examiner can normally be reached on 8-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung can be reached on 571-272-7794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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